

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1468
By: Harris
Economic Development
4/15/1999
Committee Report (Substituted)

DIGEST

Currently, federal antitrust law prohibits physicians from establishing networks to negotiate contract provisions with health benefit plans. C.S.S.B. 1468 would authorize physicians practicing within the service area of a health benefit plan to collectively negotiate the terms and conditions described by Subsection (b) of this article, if the health plan has substantial market power and if the physicians have a representative to engage in collective negotiations.

PURPOSE

As proposed, C.S.S.B. 1468 sets forth provisions for the requirements of collective negotiations by physicians, or their representative, with certain health benefit plans.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the attorney general in SECTION 1 (Articles 29.11 and 29.13, Chapter 29, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the Insurance Code, by adding Chapter 29, as follows:

CHAPTER 29. COLLECTIVE NEGOTIATIONS BY PHYSICIANS WITH HEALTH BENEFIT PLANS

Art. 29.01. FINDING AND PURPOSES. Provides that the legislature finds that collective negotiation by competing physicians of certain terms and conditions of contracts with health plans will result in pro-competitive effects in the absence of any express or implied threat of retaliatory collective action, such as boycott or strike, by physicians. Provides that although the legislature finds that collective negotiations over fee-related terms may in some circumstances yield anti-competitive effects, it also recognizes that there are instances in which health plans dominate the market to such a degree that fair negotiations between physicians and the plan are instances in which health plans dominate the market to such a degree that fair negotiations between physicians and the plan are unobtainable absent any collective action on behalf of physicians. Provides that health plans have the ability to virtually dictate the terms of the contract they offer physicians, in these instances. Provides that the legislature finds it appropriate and necessary to authorize collective negotiations on fee-related and other issues where it determines that such imbalances exist.

Art. 29.02. DEFINITIONS. Defines “health benefit plan,” “person,” “physicians’ representative.”

Art. 29.03. SCOPE OF CHAPTER. Provides that this chapter applies only to a health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including certain entities. Sets forth descriptions of the limitations of this chapter.

Art. 29.04. COLLECTIVE NEGOTIATION AUTHORIZED. Authorizes competing physicians within the service area of a health plan to meet and communicate for the purpose of collectively negotiating certain terms and conditions, including the inclusion or alteration of terms and conditions to the extent they are the subject of government regulation prohibiting or requiring the particular term or condition in question; however, such restriction does not limit physician rights

to collectively petition government for a change in such regulation. Makes conforming changes.

Art. 29.05. LIMITATIONS ON COLLECTIVE NEGOTIATION. Prohibits competing physicians from meeting and communicating for the purposes of collectively negotiating certain conditions of the health plan. Makes conforming changes.

Art. 29.06. EXCEPTION TO LIMITATIONS ON COLLECTIVE NEGOTIATION. Authorizes competing physicians within the service area of a health plan to collectively negotiate the terms and conditions specified in Article 29.05 where the health plan has substantial market power. Provides that substantial market power will be based upon the health plan's and any of its affiliated entities' number of covered lives in a defined geographic area as determined by the commissioner of insurance. Requires the Department of Insurance (department) to have the authority to collect and investigate information necessary to determine on an annual basis the average number of covered lives per month per county by every health care entity in the state.

Art. 29.07. COLLECTIVE NEGOTIATION REQUIREMENTS. Sets forth the required collective negotiation rights conformities.

Art. 29.08. REQUIREMENTS FOR PHYSICIANS' REPRESENTATIVE. Requires any person or organization proposing to act or acting as a representative of physicians for the purpose of exercising authority granted under this chapter to comply with certain requirements. Makes conforming changes.

Art. 29.09. APPROVAL PROCESS BY ATTORNEY GENERAL. Requires the attorney general to either approve or disapprove an initial filing, supplemental filing and a proposed contract within 30 days of each filing. Requires the attorney general to furnish a written explanation of any deficiencies along with a statement of specific remedial measures as to how such deficiencies could be corrected, if disapproved. Provides that a representative who fails to obtain the attorney general's approval is deemed to act outside the authority granted under this section. Requires the attorney general to approve a request to enter into collective negotiations or a proposed contract, if he determines that the applicants have demonstrated that the likely benefits resulting from the collective negotiation or proposed contract outweigh the disadvantages attributable to a reduction in competition that may result from the collective negotiation or proposed contract. Requires an approval of the initial filing by the attorney general to be effective for all subsequent negotiations between the parties specified in the initial filing. Requires the applicant to have the right to petition a district court for a mandamus order requiring the attorney general to approve or disapprove the contents of the filing forthwith, if the attorney general does not issue a written approval or rejection of an initial filing, supplemental filing, or proposed contract within the specified time period. Requires the petition to be filed in a district court in Travis County.

Art. 29.10. CERTAIN COLLECTIVE ACTION PROHIBITED. Provides that nothing contained in this chapter shall be construed to enable physicians to collectively coordinate any cessation of health care services. Requires the representative of the physicians to advise physicians of the provisions of this section and to warn physicians of the potential for legal action against physicians who violate state or federal antitrust laws when acting outside the authority of this chapter.

Art. 29.11. RULEMAKING AUTHORITY. Authorizes the attorney general and commissioner of insurance to have the authority to promulgate rules necessary to implement the provisions of this chapter.

Art. 29.12. CONSTRUCTION. Prohibits this chapter from being construed to prohibit physicians from negotiating the terms and conditions of contracts as permitted by other state or federal law.

Art. 29.13. FEES. Requires each person who acts as the representative of negotiating parties under this chapter to pay to the department a fee to act as a representative. Authorizes the attorney general, by rule, to set fees in amounts reasonable and necessary to cover the costs incurred by the state in administering this chapter. Requires a fee collected under this article to be deposited in the state treasury to the credit of the operating fund from which the expense was incurred.

SECTION 2. Effective date: September 1, 1999.

SECTION 3. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 1.

Adds Article 29.01, Chapter 29, Insurance Code, regarding findings of the legislature.

Redesignates proposed Articles 29.02 through 29.13.

Amends Article 29.02, Chapter 29, Insurance Code, to redefine “health benefit plan.” Deletes text regarding Subsection (b).

Amends Article 29.03, Chapter 29, Insurance Code, to provide that this chapter does not apply to a long-term care policy, unless the attorney general determines that the policy provides benefit coverage so comprehensive that the policy is a health benefit plan.

Amends Article 29.04, Chapter 29, Insurance Code, to authorize competing physicians within the service area of a health plan to meet and communicate for the purpose of collectively negotiating certain terms and conditions, including the inclusion or alteration of terms and conditions to the extent they are the subject of government regulation prohibiting or requiring the particular term or condition in question; however, such restriction does not limit physician rights to collectively petition government for a change in such regulation. Deletes text regarding Subsections (b) and (c). Makes conforming changes.

Amends Article 29.05, Chapter 29, Insurance Code, to prohibit competing physicians from meeting and communicating for the purposes of collectively negotiating certain conditions of the health plan. Redesignates proposed Subdivisions (1)-(5) as Subsections (a)-(d). Deletes text regarding Subsections (a)(5) and (b). Makes conforming changes.

Adds Article 29.06, Chapter 29, Insurance Code, regarding an exception to limitations on collective negotiation.

Amends Article 29.07, Chapter 29, Insurance Code, to set forth the required collective negotiation rights conformities. Redesignates proposed Subdivisions (1)(5) as Subsections (a)-(f). Makes conforming changes.

Amends Article 29.08, Chapter 29, Insurance Code, to require any person or organization proposing to act or acting as a representative of physicians for the purpose of exercising authority granted under this chapter to comply with certain requirements. Deletes text regarding Subsections (d)-(g). Makes conforming changes.

Adds Article 29.09, Chapter 29, Insurance Code, regarding the approval process by the attorney general.

Amends Article 29.10, Chapter 29, Insurance Code, to make conforming changes.

Adds Article 29.11, Chapter 29, Insurance Code, regarding rulemaking authority.

Adds Article 29.12, Chapter 29, Insurance Code, regarding construction of this article.

Amends Article 29.13, Chapter 29, Insurance Code, to authorize the attorney general, by rule, to set fees in amounts reasonable and necessary to cover the costs incurred by the state in administering this chapter. Requires a fee collected under this article to be deposited in the state treasury to the credit of the operating fund from which the expense was incurred. Makes conforming changes.